

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2826 OF 2019

SANDIP FAKIRA KAKULTE

....APPLICANT

V/S.

STATE OF MAHARASHTRA,
THROUGH AZAD MAIDAN
POLICE STN.

...RESPONDENT

BAIL APPLICATION NO. 2699 OF 2019

NEERAJKUMAR DILIP KUMAR
DESAI

....APPLICANT

V/S.

STATE OF MAHARASHTRA,
THROUGH AZAD MAIDAN
POLICE STN.

...RESPONDENT

BAIL APPLICATION NO. 2814 OF 2019

SHITALA PRASAD ORI RAM KORI

....APPLICANT

V/S.

STATE OF MAHARASHTRA,
THROUGH AZAD MAIDAN
POLICE STN.

...RESPONDENT

BAIL APPLICATION NO. 2813 OF 2019

ANIL RAMKRISHNA PATIL

....APPLICANT

V/S.

STATE OF MAHARASHTRA,
THROUGH AZAD MAIDAN
POLICE STN.

...RESPONDENT

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Mr. Rishi Bhuta a/w Manish Bohra, Ujjwal Gandhi, Gunjan Thakkar, Tushar Dahibawkar, Aarti Bhoir, Anurag Ghag, Ashish Dubey i/b Dahibawkar and Co. for applicant in BA-2826/2019.

Mr. D. N. Salvi a/w Sahil D. Salvi, Suyash Sule, Ninad More, Aditya Raktade, Sagar Redkar for the Applicant in BA-2699/2019.

Mr. Shirish Gupte Sr. Adv. a/w Ashwin Thool i/b Kunal Shejwal for Applicant in BA Nos. 2813 and 2814/2019.

Mr. Y. M. Nakhawa a/w. Mr. S. R. Agarkar, APP for the Respondent- State.

PI Mr. Ramesh Yadav - Azad Maidan Police Station.

CORAM : SANDEEP K. SHINDE, J.

DATED : 18TH DECEMBER, 2019

P.C. :

1. Applicant in Bail Application No. 2813 of 2019 is Executive Engineer (Bridges) with Municipal Corporation of Greater Mumbai ("M.C.G.M." for short).

2. Applicant in Bail Application No. 2814 of 2019 was appointed as a Chief Engineer (Bridges). He retired on 31st July, 2018.

3. Applicant in Bail Application No. 2826 of 2019 is Assistant Engineer with the Bridges Department, M.C.G.M.

4. Applicant in Bail Application No. 2699 of 2019 is a Consulting Engineer in whose favour the Work-Order was issued by the M.C.G.B. for making/undertaking inventory of bridges in Mumbai.

5. Applicants are seeking their enlargement on bail in Crime No.39/2019 (corresponding Sessions Case No. 844/2019) for the offences punishable under Sections 304(ii), 337 and 338 of the Indian Penal Code.

FACTS :

6. On 14th March 2019, six commuters were killed while thirty-four others sustained injuries after the nodal footover bridge at the northern end of Chatrapati Shivaji Maharaj Terminus (CSMT) came

crashing down. The police lodged an FIR against the BMC for, "negligence" leading to death.

7. On 15th March, 2019 Municipal Commissioner directed Chief Engineer (Vigilance) to conduct enquiry of the incidence and fix-up responsibility of municipal staff, structural auditors. The report has blamed negligence of officers of Corporation and auditors for resulting into mishap on March 14th, where seven people died. Chief Engineer (Vigilance) reported following supervision lapses designation-wise of the staff, as under :

(a) **Chief Engineer (Bridges) -**

(i) Bridge Dept. Maintenance Manual and the circular not followed by the Department in toto with respect to periodic inspections and repairs of FOB being carried out in biennial contract.

(b) **Deputy Chief Engineer (Bridges) -**

(i) No proper inspection/audit has been conducted before the repairs carried out under biennial contracts.

(c) **Executive Engineer (Bridges) :**

(i) Lack of proper documentation of the repairs works carried out and non-maintenance of important records.

(ii) No drawing prepared for the replacement of structural steel members replaced/repared through the repair works carried out 2013-14.

(d) **Assistant Engineer (Bridges) -**

(i) No drawing prepared for the replacement of structural steel members replaced/repared through the repair works carried out 2013-14.

(ii) No proper inspection carried out before the repairs of FOB was undertaken in 2013-14.

(iii) Lack of proper documentation of the repairs work carried out and non-maintenance of important records.

(iv) Improper supervision of the work of repairs carried out by Contractor, M/s. RPS Infra Project Pvt. Ltd. Since prima-facie the work of epoxy paint was not carried out as per specifications/

(e) **Assistant Engineer (Bridges)-**

(i) No drawing prepared for the replacement of structural steel members replaced/repared through the repair work carried out in 2013-14.

SUPERVISION LAPSES QUA STRUCTURAL AUDIT OF FOB.

(a) **Executive Engineer (Bridges)-**

(i) The reports submitted by the auditors were not scrutinised properly and accepted the final report as per the auditors recommendations. (emphasis supplied)

(ii) No reply/remarks are offered to Assistant Commissioner, A-Ward regarding need of structural repairs before carrying out the refurbishment work by 'A' Ward.

(b) **Assistant Engineer (Bridges) -**

(i) The reports submitted by the auditors were not scrutinized properly and accepted the final reports as per auditor's recommendations (emphasis supplied).

(ii) Periodic inspection of FOB nto done before year 2016.

(iii) No reply/remarks are offered to Assistant Commissioner 'A' Ward regarding need of any structural repairs before carrying out the refurbishment work by 'A' Ward.

8. As against the structural auditors, it is reported that :

(i) the Auditor has overlooked his own observations to monitor next inspection in respect of corrosion of the members of truss 1 and truss 2, deck drainage and other defects as per his report dated 26.12.2016. (emphasis supplied)

(ii) the Auditor has failed to identify proper locations for testing in concrete and structural steel members of super structure of FOB in spite of his observations in his report dated 26.12.2016 that corrosion in super structure needs monitoring in next inspection and critical parts of super structure. (emphasis supplied)

(iii) Auditor has overlooked the remarks of testing agency M/s. Geo Dynamics to compare the original drawings for knowing reduction in

thickness/strengthening of structure as required and without any analysis submitted final report stating that FOB is in good condition. (emphasis supplied)

(iv) Auditors did not take the Football Vibration Test as provided under the contract. (emphasis supplied)

9. The Chief Engineer (Vigilance) observed in his report that, during the work of refurbishment and painting of the FOB undertaken by Ward Office, the existing flooring was removed and granite slab flooring was provided. This has resulted in additional dead load on FOB.

10. The Chief Engineer, (Vigilance) opined, *prima-facie*, it appears that the collapse of FOB was triggered by the failure of supporting joints of the floor beams with truss 1 and truss 2 which comprises of welded joints of floor beams and truss due to weakening/corrosion of welds. He reported and observed that the FOB was originally constructed in the year 1992 to cater the pedestrian traffic crossing the D.N. Road and alighting on adjoining

Platform No.1. Thereafter, in 2014, the bridge was connected to all the 18 platforms of outgoing trains, thereby probable increase in the live load on the FOB. Report suggests, in the circumstances, it will be necessary to analyse the effect of human induced forces that may cause the dynamic loading (moving live load) and it needs to be analysed by experts.

11. As such, Chief Engineer (Vigilance) cited these factors might have contributed to some degree to the collapse of the FOB; however opined, the exact reason of collapse can be ascertained only after studying the design criteria and effects of change in loading dynamic due to reasons stated above by an expert and scientific study/testing of collapsed materials is carried out.

12. The report of the Civil Engineer (Vigilance) attributes lapses in the supervision by its employees, Chief Engineer (Bridges), Deputy Engineer-PWD, Executive Chief Engineer (Bridges), Assistant Engineer (Bridges) and negligence on the part of Auditor-Prof. D.D. Desai's Associated Engg.

Consultant and Analyst Pvt. Ltd. The report also suggests and indicates the refurbishment and the painting work undertaken by Ward Officer in January, 2017 with replacement of the granite slab flooring has resulted in additional dead load on FOB. Thus, in his opinion, live load on the FOB and the dead load on the FOB due to refurbishment might have contributed to some degree to the collapse of the FOB. (emphasis supplied)

13. Before advertizing to the arguments canvassed by the Counsel for the respective applicants, it may be stated that in March 2016, M.C.G.M. decided to carry out detailed investigation and condition survey of bridges which are observed to be critical/poor during visual inspection with an aim to ascertaining the structural capacity and functioning of the various components of bridges and suggesting measures for rectification to ensure continued functioning of the bridge and its durability and/or advise as to whether any of the bridges are beyond repairs. E-Tender notice was issued on 14th March, 2016 wherein scope of work was outlined in two parts; Part-I

relates to Inventory of Bridges, where the tenderers can inspect all the bridges and prepare the record for each bridge and report general assessment of structure viz; (i) good condition; (ii) bad condition which require minor repairs; and (iii) worst condition requiring structural audit.

. Part-II of the scope of work includes, the Consultants shall propose methodology and specifications of repairs to M.C.G.M. before final evaluation and ensure that high quality rehabilitation is achieved.

14. On 26.12.2016 Consultant-M/s. D.D. Desai's Associated Engineering Consultants & Analysts Pvt. Ltd. submitted inventory details and structural audit report of the Times of India Foot Over Bridge to the Chief Engineer (Bridges) and sought approval for the Non-Destructive Test.

15. On 2nd July, 2018 the Consultant submitted summary of inventory of bridges and reported, Footover Bridge (FOB) requires minor repairs and opined, condition of the bridge was good. In August 2018, M.C.G.M. certified and issued

a Credential Certificate to consultant and certified, successful completion of the subject project.

16. It may be stated that M/s. Geo Dynamics was engaged by consultants to conduct Ultrasonic Pulse Velocity (UPV) Test, Rebound Hammer Test, Carbonation Tests, of concrete surface on FOB at project site, measure thickness of steel members and Dye Penetration Test. M/s. Geo Dynamics submitted its report to consultant on 12.07.2017 and reported total sixteen points were tested on FOB with UPV testing by direct and indirect method and presented the result. UPV testing classified concrete quality as 'good'. The tests revealed carbonisation, upto 30 m.m. was evident and opined this was likely due to exposure of concrete to weather. Sofar as, thickness measurement of steel members of FOB is concerned, M/. Geo Dynamics reported thus :

"The thickness of members were measured as per location marked in Table-2" but suggested necessary comparison may be done by consultant

with original drawing for knowing reduction in thickness / further action of repair / strengthening of structure as required."

(emphasis supplied)

17. The report of M/s. Geo Dynamics was forwarded to the M.C.G.M. by the consultants and thereafter in July-August, 2018 a Credential Certificate was issued by the M.C.G.M. certifying successful completion of the subject project. However, it appears, the consultant did not carry out exercise of comparing thickness/measurement of steel members. Mr. Salvi, learned Counsel for the Consultants, submits this exercise could not be done since original drawing of FOB was not made available to. The learned APP for the State, on instructions, does not dispute this fact. Thus, though M/s. Geo Dynamics suggested to compare the thickness of the steel members as found, with the original drawings, but it could not be done for want of details of the original drawings. Mr. Salvi submits, the result of the test relating, to thickness measurement of steel members was brought to the notice of the MCGM in July 2017; on 6th August,

2018 final report was submitted to the Chief Engineer (Bridges) and soon thereafter credential certificate was issued to the Consultant by the Corporation as aforesaid.

18. It may be stated that the prosecution sought a report from Veermata Jijabai Technological Institute (VJTI) of the material collected from the collapse of Himalay Bridge. Samples were collected from available debris and the test was performed in the Laboratory on 12.04.2019. The experts examined two steel plates and three steel rods taken from the wreckage and suggested the later to tencile test and reported thus :

"Pitting of steel, loss of material and reduction in thickness due to heavy corrosion has been observed. The variation in the thickness due to corrosion has been measured and observed to vary from minimum 2.8 mm to maximum 10.0 mm. Considering presently 10 mm as original thickness of plate (due to absence of actual data), there is significant reduction in effective cross-section area of the structural member leading to decrease

in load carrying capacity of the FOB." (emphasis supplied)

. It may be stated that the Structural Engineer of VJTI has assumed thickness of plate as 10 mm, in absence of original drawing. In view of this fact, Mr. Salvi, learned Counsel for the consultant was right in submission that, the consultant could not undertake the exercise of comparing the thickness measurement of steel members as found with the original drawings. The question is, who is to be blamed for not making the original drawings available for comparison as suggested by M/s. Geo Dynamics, not only to consultants but even to VJTI. It is not clarified by the prosecution, whether drawing of FOB was available when the tenders were invited and if were not available, how tenders were invited, awarded and how credential certificate was issued ? Next question is, whether, Corporation has taken efforts to trace it ? And whether Corporation has fixed up the liability on the concerned staff member of Design Department ? Further, Corporation could not make the drawing available from the Company which

constructed this FOB ? It is surprising to note original FOB drawing was not made available even to VJTI, who on assumption, opined reduction of thickness of cross-section, caused collapse of bridge.

19. In the backdrop of the aforesaid facts, the arguments of the applicants are to be appreciated.

20. Mr. Gupte, learned Senior Counsel appearing for the applicants (employees' of the Corporation) submitted, the facts of the case and evidence does not admit commission of offence under Section 304(II) of the Indian Penal Code. It is submitted, doing an act with the intent to kill a person or knowledge or that doing of an act was likely to cause a person's death are ingredients of offence of "culpable homicide", which are completely absent in the case in hand. Submission is, when intent or knowledge is the direct motivating force of the act complained of, provisions of Section 299 of the Indian Penal Code are attracted. Mr. Gupte submitted, material in the chargesheet, does not suggest, acts/omissions

complained of, were with intention or knowledge. Submission is, report of Chief Engineer (Vigilance) attributes gross negligence and failure of employees to exercise reasonable and proper care, and precaution to guard against the injury either to public or individual amounts to negligence and not offence of "culpable homicide not amounting to murder". Mr. Gupte, has relied on Affidavit of the Investigating Officer, Mr. Yadav, who then stated in para-27, thus;

" 27. I say that the Accused Neeraj Dilip Kumar Desai inspected the aforesaid bridge visibly and gave his opinion that the said bridge is "good" even though the same was not good. I say that the accused Shital Prasad Ori Ram Kori was holding the position as Chief Engineer at the time when the Inventory Structural Audit and repairing of the said bridge was going on and the accused Anil Ramkrishna Patil was holding the position as Executive Engineer at the time when the Inventory Structural Audit and repairing of the said bridge and both of them failed to perform their duties

in diligent manner." (emphasis supplied)

. Mr. Gupte, therefore submitted, even the State alleges 'negligence' and 'dereliction of duties' and not 'culpable homicide'.

21. Mr. Gupte, has relied on paras-20, 21 and 22 of the judgment of the Hon'ble Apex Court in the case of **Keshub Mahindra Versus. State of M.P. 1996 SCC (Cri) 1124** to submit that the material which prosecution relied upon, does not suggest that the officers of the Corporation with knowledge omitted to undertake repair/strengthening of structure after M/s. Geo Dynamics had pointed out reduction of thickness of members at some locations of FOB. Submission is, in view of the report of M/s. Geo Dynamics, it was imperative duty of the applicants to exercise reasonable and proper care having regard to circumstances and their duties. It is therefore submitted, the facts of the case and the evidence may attract penal provisions of Section 304A of the Indian Penal Code and not Section 304-II of the Indian Penal Code. Mr. Gupte,

submitted offence under Section 304-A is bailable and punishment is imprisonment for a term which may extend to two years or with fine or both. It is further submitted that, investigation is over. The trial may not commence in the near future. The applicants are permanent residents of the State and their presence can be secured for trial, by imposing appropriate conditions.

22. Mr. D.N. Salvi, learned Counsel appearing for the consultants in Bail Application No. 2699 of 2019 would submit that, M/s. Geo Dynamics classified and reported concrete quality of FOB as 'good' and though suggested, comparison may be done, for ascertaining reduction in thickness of members, it could not be done for want of original drawing of FOB. Mr. Salvi, next submitted that M/s. Geo Dynamics carried out, Non-Destructive Test (NDT) at few locations only, it was not technically viable, to conduct the NDT on all locations of FOB. He submitted live load on FOB and its refurbishment by replacing granite slab floor were factors, equally contributed to collapse of the bridge, as suggested in the report of the Commissioner (Vigilance). Mr.

Salvi, adopted other arguments of Mr. Gupte, to contend the facts/allegations do not make out offence of culpable homicide. He further submitted, facts may hold applicants for "negligence" and not even for "culpable or gross negligence", in as much as the consultants had carried out NDT at possible locations and such test could not have been carried out at all locations of FOB. He submits, negligence alleged is outcome of "error of judgment".

23. Mr. Nakhawa, learned APP has relied on the statement of Mr. Ravi Kiran Vaidya of M/s. Geo Dynamics. He submitted that, once M/s. Geo Dynamics had pointed out reduction in the steel members of the FOB, applicants ought to have taken the steps to repair or strengthen the FOB. He therefore submits, 'omission' coupled with knowledge when resulted into incidence, the offence "culpable homicide not amounting to murder" is made out and it is not a sheer negligence as contended.

24. Doing an act with an intent to kill a person or knowledge that doing of an act was likely to cause a person's death, are ingredients of an

offence of "culpable homicide". It is trite law that Section 304-II comes into play when death is caused by doing an act with knowledge that it is likely to cause death, but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death. Evidence on record and report of the Chief Engineer (Vigilance) suggests "lapses" in discharge of the duties by the applicants. Vigilance report points out, (i)no proper inspection audit has been conducted before the repairs carried out; (ii)lack of proper documentation of the repairs carried out and non-maintenance of important records; (iv)improper supervision of work of repairs carried out by Contractor, M/s. RPS Infra Project Pvt. Ltd. ; (iv)reports submitted by the auditors were not scrutinized properly; (v)periodic inspection of FOB was not done before the year 2016; and (vi)no drawings prepared or replacement of structural steel members though repaired was carried out in 2013-14 and Auditor has overlooked the remark of testing Agency.

25. As such, prima-facie material on record, does not suggest that the applicants has had knowledge that alleged act of omission to verify the thickness of members of steel of FOB with original drawings and omission to take remedial measures would cause collapse of bridge. It may be stated, the consultants submitted final report in July-August, 2018 to the Corporation and soon thereafter Credential Certificate was issued certifying completion of project. Evidence, shows consultant could not verify thickness of member of FOB, for want of drawing. Officers of the Corporation took no pains to make the drawing available to consultant either before or after Non-Destructive Test. However, officers of the Corporation and consultant, both overlooked, M/s. Geo Dynamic's report, wherein reduction in thickness of members of FOB was reported. Had Corporation's Officer submitted drawings of FOB to consultant, exercise to measure thickness of members of FOB with drawing and further action to strengthen the bridge, possibly could have avoided the mishap. However, it is only after the incidence, on 12th April, 2019, Chief Engineer (Bridges) sought to obtain some

documents relating to design of FOB and copies of plan from M/s. STUP Consultants Private Limited; a entity which had designed the subject FOB. It may be stated, the officers of the Corporation chose to remain passive and did not forward the drawing to VJTI. As to why, the applicants, opted to be passive and turned nelsons' eye to the suggestion of M/s. Geo Dynamics, are the moot questions. However, fact remains, "culpable negligence" by itself cannot be substituted with "knowledge" an ingredient of Section 299 Clause (c) of the IPC.

26. *Prima-facie*, facts of the case do not suggest commission of an offence under Section 304(II) of the Indian Penal Code. In this case, the investigation is over. Applicants are in custody since March, 2019. All applicants are permanent residents of Mumbai and their presence can be secured by imposing conditions. Applicants are therefore directed to be released.

ORDER

(i) The Bail Applications are allowed.

(ii) The applicants arrested in Crime No.39/2019 (corresponding Sessions Case No. 844/2019) are directed to be released on bail on furnishing P.R. Bond of Rs.50,000/- each (Rs. Fifty Thousand only) with one or more sureties in the like amount.

(iii) The applicants shall not leave the Country, without first obtaining permission of the learned trial Court.

(iv) The applicants shall report to the Investigating Officer as and when called.

(v) The applicants shall furnish the particulars of their latest place residence and mobile contact number and/or change of residence or mobile details, if any, to the Investigating Officer of the Police Station concerned within a week from their release.

(vi) The applicants shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

(vii) It is made clear that the observations made herein are prima-facie in nature and the trial Court shall decide the case on its own merits in accordance with law, uninfluenced by the observations made in the order.

26. With the aforesaid, the Bail Applications stand disposed off.

(SANDEEP K. SHINDE, J.)